



2004 MISSOURI
**SUNSHINE
LAW**

OFFICE OF MISSOURI ATTORNEY GENERAL JEREMIAH W. (JAY) NIXON

Introduction

Committed to openness

I am pleased to provide you with a new Sunshine Law booklet containing the significant changes made during the 2004 legislative session. In addition, this booklet includes summaries of two new opinions issued by my office in the past year as well as a recent decision from the Missouri Court of Appeals, Eastern District.



2004 AMENDMENTS TO MISSOURI'S SUNSHINE LAW

Several of the changes are based on proposals developed by my office to “upgrade” the Sunshine Law to deal with issues presented by new technology.

- **610.010:** Makes clear that meetings and votes conducted by phone, video conference or Internet are covered by the Sunshine Law. Pages 43-44.
- **610.020:** Strengthens notice requirements for meetings held by electronic means, secures the public’s right to audiotape and videotape open meetings, and requires public bodies to keep minutes of closed meetings. Pages 45-47.
- **610.023:** Requires records to be provided in the format requested if available. Page 54.
- **610.025:** Ensures that e-mails exchanged among a majority of a public body with four or more members, or among all members of a public body with three members, are open to the public, unless covered by a specific exception. Page 55.

Some of the other noteworthy changes include:

- **610.015:** Requires, with certain exceptions, votes by elected bodies to be held with a quorum present in person. Page 45.
- **610.022:** Provides that a member of a public body who properly objects to a vote by the body to close a meeting, vote or record has a defense against claims for violation of the Sunshine Law. Page 53.

- **610.026:** Clarifies what public bodies can charge for search and copying and caps fees for standard copies at 10 cents per page. Page 55.
- **610.027:** Increases penalties for violations of the Sunshine Law. Pages 57-58.

NEW ATTORNEY GENERAL OPINIONS

- **Opinion No. 126-2003:** The Sunshine Law requires an election authority to release a record of voter registration information to a newspaper and to provide a copy in CD-ROM format if available. Page 27.
- **Opinion No. 143-2003:** A citizen's advisory committee is a public governmental body and records of communications from members of the committee or city staffers to a private consultant are public records. Page 27.

NEW COURT CASE

- **State ex rel. Moore v. Brewster**, 116 S.W.3d 630 (Mo. App. E.D. 2003): A report on alleged misconduct by two school board members is a closed record as legal work product, but must be shared with all board members. Attorney fees are awarded against the board because of failure to appoint a custodian of records. Page 32.

I hope this booklet will help public officials comply with the Sunshine Law and assist all citizens in better understanding their rights to an open and accessible government.

Sincerely,



Jeremiah W. (Jay) Nixon
Missouri Attorney General



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A Summary

Missouri's commitment to openness in government is clearly stated in Section 610.011 of the Sunshine Law: "It is the public policy of this state that meetings, records, votes, actions, and deliberations of public governmental bodies be open to the public unless otherwise provided by law. Sections 610.010 to 610.200 shall be liberally construed and their exceptions strictly construed to promote this public policy."

The law sets out the specific instances when a meeting, record or vote may be closed, while stressing these exceptions are to be strictly interpreted to promote the public policy of openness.

Public meetings, including meetings conducted by telephone, Internet or other electronic means, are to be held at reasonably convenient times and must be accessible to the public. Meetings should be held in facilities that are large enough to accommodate anticipated attendance by the public and accessible to persons with disabilities.

PUBLIC GOVERNMENTAL BODIES 610.010(4)

The Sunshine Law governs the actions of public governmental bodies, which are defined as legislative, administrative or other governmental entities created by the constitution or statutes of this state, or by order or ordinance of any political subdivision or district as well as judicial entities when operating in an administrative capacity.

This includes not just state agencies and officials, but also governing bodies of institutions of higher education; and any department of any political subdivision of the state, county or municipal government, school district or special-purpose district, including sewer and water districts. The term "governmental body" is defined to include "quasi-public governmental bodies," which are defined in Section 610.010(4)(f). Those entities that regularly enter into contracts with public governmental bodies or perform certain types of public functions (such as issuing tax credits) should review this definition to determine whether they must comply with the Sunshine Law.



The Missouri Sunshine Law governs only state, local and quasi-public governmental bodies. Federal officers and agencies are covered by the federal Freedom of Information Act (*see page 76*).

SUNSHINE POLICY 610.028

Each public governmental body shall provide a reasonable written policy consistent with the Sunshine Law and open to the public regarding access to public records and meetings.

MEETING NOTICES 610.020

At least 24 hours (excluding weekends and holidays) before a public meeting, the public body must prominently post a notice of the meeting in its principal office. If there is no such office, the public body should post the notice at the meeting place. The notice must include:

- Time of meeting;
- Date of meeting;
- Place of meeting;
- Tentative agenda of an open meeting; and
- Whether the meeting is open or closed.

If the public body intends to hold a meeting by conference call or other electronic means, the notice must specify the location where the public may observe and attend that meeting. If the public body meets via Internet or other computer link, it shall post a notice on its Web site in addition to posting the notice at its principal office.

If exceptional circumstances prevent the public body from posting notice 24 hours in advance or prevent the meeting from being held at a convenient time or in a place reasonably accessible to the public, the reasons should be stated in the meeting's minutes.

PUBLIC RECORDS 610.010, 610.023, 610.024, 610.026

Unless otherwise provided by law, records of a public governmental body are to be open and available to the public for inspection and copying. The governmental body may charge up to 10 cents per page for standard copies and the actual cost of the copy for larger or specialized

documents (such as maps, photos and graphics). The body also may charge a reasonable fee for the time necessary to search for and copy public records. Research time may be charged at the actual cost incurred to locate the requested records. Copying time shall not exceed the average hourly rate of pay for clerical staff of the public body. A public body may reduce or waive costs when it determines the request is made in the public interest and is not made for commercial purposes.

The term “public record” includes records created or maintained by private contractors under an agreement with a public governmental body or on behalf of a public governmental body.

Each public governmental body must appoint a custodian of records. The Sunshine Law requires that each request for access to a public record be acted on no later than the end of the third business day following the date the request is received by the custodian. If access is denied, the custodian must explain in writing and must include why access is denied, including the statute that authorizes the denial.

If only part of a record may be closed to review, the rest of the record must be made available.

The law also requires that if a request is made in a particular format, the custodian shall provide the records in that format if it is available.

E-MAILS AMONG MEMBERS OF PUBLIC BODIES 610.025

If a member of a public body transmits an e-mail relating to public business to at least two other members of the body so that, when counting the sender, a majority of members are copied, a copy of the e-mail shall be sent to either the custodian of records, or the member’s public office computer. Any such message, subject to the exceptions of Section 610.021, shall be considered a public record upon receipt by the custodian or at the public member’s computer.



CLOSED MEETINGS AND RECORDS 610.021, 610.022

A public governmental body is permitted, but not required, to close its meetings, records and votes when they relate to certain issues listed in Section 610.021. When a public body relies on one of these exceptions to close a meeting or record, it should bear in mind that the exceptions are to be read narrowly under Section 610.011. Matters that may be closed include:

- Legal actions, causes of action or litigation (except that votes, minutes and settlement agreements must be opened to the public on final disposition, unless ordered closed by a court).
- Leasing, purchase or sale of real estate where public knowledge might adversely affect the amount paid in the transaction.
- Hiring, firing, disciplining or promoting a particular employee.
- Welfare cases of identifiable individuals.
- Software codes for electronic data processing.
- Individually identifiable personnel records.
- Records related to existing or proposed security systems.
- Records that are protected from disclosure by other laws.

When a public governmental body votes to meet in closed session, members must cite in open session the specific statute and subsection allowing closure. Once in closed session, the public body may not discuss any matter beyond the scope of the stated reason for the closed session. The public governmental body must close only that portion of the facility necessary for its members to conduct the closed meeting, allowing space for the public to remain and attend any later open session.

WHO CAN BRING LEGAL ACTION 610.027

Any Missouri taxpayer, citizen or aggrieved person, the Attorney General, or the county prosecutor may bring a court action to enforce the Sunshine Law. The lawsuit must be filed in the circuit court in the county where the public governmental body has its principal place of business. A lawsuit must be filed within one year from when the violation is ascertainable, and in no event shall it be brought later than two years after the violation occurred.

PENALTIES 610.027

If the court finds a public governmental body has violated the Sunshine Law, it may declare void any action taken in violation of the law. If the court finds, by a preponderance of evidence, that the public body or a member of the public body has knowingly violated the Sunshine Law, the court:

- Shall subject the member or body to a civil fine of up to \$1,000; and
- May order the member or body to pay all costs and reasonable attorney fees to any party successfully establishing a violation.

If the court finds, by a preponderance of evidence, that the public body or member has purposely violated the Sunshine Law, the court shall:

- Subject the member or body to a civil fine of up to \$5,000; and
- Order the member or body to pay all court costs and reasonable attorney fees.

If a public governmental body has any doubt about the legality of closing a particular meeting, record or vote, it may bring suit in the circuit court to determine whether the action is proper or it may seek a formal opinion from its own attorney or from the Attorney General.

LAW ENFORCEMENT RECORDS 610.100-610.200

Law enforcement records are subject to separate provisions of the Sunshine Law. The law now provides, however, that law enforcement records are subject to the same presumption of openness that applies to other public records (Section 610.011).

In addition, an agency or officer who knowingly or purposely violates the Sunshine Law is subject to the same monetary penalties set out in Section 610.027.



Frequently asked questions

Are advisory committees, boards and commissions subject to the Sunshine Law?

Yes (*Section 610.010(4)*).

When a public governmental body forms a committee or subcommittee from its own membership, is that group also subject to the Sunshine Law?

Yes (*Section 610.010(4)*).

Other closed records

Are there any laws other than Chapter 610, RSMo, to be aware of when determining whether a record is open or closed?

Yes. These other laws are generally referenced in Section 610.021 (14) of the Sunshine Law. For instance, HIV testing records are closed under Section 191.656. Other closed records not described in Section 610.021 include, but are not limited to:

- Tax returns (*Section 32.057*).
- Qualification to carry a concealed weapon (*Section 571.101.9*).
- Many juvenile records (*Section 211.321*).
- Mental health treatment records (*Section 630.140*).
- Genetic information (*Section 375.1309*).
- Adoption records (*Sections 453.120 and 453.121*).

Records also may be closed under federal law. For example, educational agencies or institutions may lose federal funding if they release education records or personally identifiable information of students without their parents' written consent (*Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g*).

To search for other Missouri laws on closed records, go to:
www.moga.missouri.gov/homestat.asp

Type in such search terms as "Chapter 610," "exempt," "Sunshine Law," and "confidential."

Does the Sunshine Law apply to private, nonprofit corporations or civic organizations?

In some instances, yes. Section 610.010(4) includes “quasi-public governmental bodies” in the definition of public governmental bodies subject to the Sunshine Law.

A quasi-public governmental body is an organization that either (a) primarily contracts with or handles activities agreed upon with public governmental bodies, or (b) by statute allocates or issues tax credits, tax abatement, public debt, tax-exempt debt, rights of eminent domain or leaseback agreements. It also includes associations that directly accept appropriated money from a public body, but only when they have meetings, records or votes that relate to the appropriations.

Examples of organizations covered by the Sunshine Law are area agencies on aging (*Attorney General’s Opinion No. 27-87*), Missouri School Boards Association (*Attorney General’s Opinion No. 103-88*), Convention and Visitors Bureau of Greater St. Louis (*Champ v. Poelker*, 755 S.W.2d 383 (Mo. App. E.D. 1988)), and a sheltered workshop established by a nonprofit corporation (*Attorney General’s Opinion No. 100-2001*).

Does the Sunshine Law apply to luncheon meetings of members of a public governmental body where public business is discussed?

Yes. A public meeting is any meeting of a public governmental body where public business is discussed, decided or public policy is formulated (*Section 610.010(5)*). Public business is defined in Section 610.010(3) as all matters that relate in any way to the performance of the public governmental body’s functions or the conduct of its business.

In *The Kansas City Star v. Shields*, 771 S.W.2d 101 (Mo. App. W.D. 1989), the chairman and two members of the Kansas City City Council Finance Committee, city manager and city budget director held a luncheon meeting without notice in a private dining room of a Kansas City restaurant. The following day, the committee unanimously adopted a budget agreement. This meeting, where public business was discussed, constituted a public meeting and notice should have been posted. (*See Attorney General’s Opinion No. 10-75.*)



Informal gatherings of members of a public governmental body for social or ministerial purposes where there is no intent to avoid the Sunshine Law are not public meetings.

What are the notice requirements of the Sunshine Law?

Section 610.020.1 requires a public governmental body to give notice of the time, date and place of each meeting and its tentative agenda in a manner reasonably calculated to advise the public of the matters to be considered. The notice must state if the meeting is to take place by telephone, the Internet or other electronic means, and the location where the public may observe and attend the meeting, or the Internet message board the body will be using. Section 610.020.2 states this notice must be given at least 24 hours (excluding weekends and holidays) before the meeting, unless such notice is impossible. The notice must be posted prominently in the principal office of the body holding the meeting, or, if there is no such office, in the building where the meeting will be held. If the body is meeting via the Internet, it also is required to post a notice on its Web site with information on how to access the meeting. Reasonable notice includes making copies of the notice available upon request to representatives of the news media at the same time notice is posted.

If a meeting must be held on less than 24 hours' notice, minutes of the meeting should state the reasons why it was not possible to give such notice.

How does the Sunshine Law apply to electronic records?

The Sunshine Law encourages public governmental bodies to maintain records in electronic formats that are accessible to the public (*Section 610.029.1*). Public governmental bodies are obligated to provide records in the format requested, if available (*Section 610.023.3*). However, when a requester demands records in a format beyond the scope of staff expertise, a body may charge for the actual rate of programming necessary to comply with the request (*Section 610.026.1(2)*).

Section 610.025 creates a new requirement for certain e-mails among members of a public body. The new requirement is triggered when a

member of a public body sends an electronic message dealing with public business to two or more members so that, when counting the sender, a majority of the body's members are copied on the message. When this section applies, the message must be copied to the body's custodian of records or the member's public office computer and then made available as a public record, unless it is subject to an exception in Section 610.021 allowing it to be treated as a closed record.

Meetings conducted via the Internet are subject to the Sunshine Law (*Section 610.010(5)*). Notices of meetings that are to take place by Internet chat, message board or computer link must explain to the public how it may access the meeting. The public body also must post a notice of the meeting on its Web site (*Section 610.020.1*).

What are the procedures for obtaining access to public records?

Each public governmental body must appoint a custodian of records responsible for maintaining the body's records and for handling requests (*Section 610.023.1*). All public records must be made available for public inspection and copying, unless there is a statute that either permits or requires them to be closed.

When a request is made for access to a public record, the records custodian must allow access as quickly as possible, but no later than the end of the third business day following the date of the request. Records must be provided in the format requested, when available.

If access to a public record is not granted immediately, the records custodian must explain why the record cannot be produced without delay and give the place and time the record will be made available (*Section 610.023.3*). There may be times when, for example, a request is made for an old record that is stored in a different location or will take time to research, locate or reproduce. In such instances, when reasonable cause for delay is explained, the period for producing the record may exceed three business days.

If a request for access is denied, the custodian shall provide, on request, the reasons for the denial, including the statute that authorizes the denial. The denial must be furnished to the requester within three business days after the request is received (*Section 610.023.4*).



Can citizens videotape public governmental body meetings?

Public bodies are required to allow recordings by audiotape, videotape or any other electronic means at open meetings. The public body may establish guidelines to minimize disruption.

Recording a properly closed meeting without the permission of the public body, however, is not permitted, and is a class C misdemeanor (*Section 610.020.3*).

How much can a public governmental body charge for producing copies of public records, and can the records custodian require the person requesting the record to make copies?

The amount to be charged for copies depends on the types of records to be produced and the time and expenses associated with the duplication.

For paper copies that are 9 by 14 inches and smaller, the custodian may charge up to 10 cents per page. In addition, the custodian may charge for time spent duplicating the records and for research time spent fulfilling the request. The charges for time spent on duplication cannot exceed the average hourly rate of pay for clerical staff, and the charges for research cannot exceed the actual cost of research time (*Section 610.026.1(1)*).

For all other types of records, including paper larger than 9 by 14 inches, tapes, disks, pictures, maps and slides, the custodian may charge for the cost of the materials used for duplication and staff time, which cannot exceed the average rate of pay for the body's staff. Fees for maps, blueprints or plats requiring special expertise to duplicate may include the actual rate of pay for the trained personnel making the copies. In addition, if programming is required, fees may include the actual cost of the programming (*Section 610.026.1(2)*).

The public governmental body may waive or reduce its fees when it is in the public interest to do so.

Under *Section 610.023.2*, a public governmental body is required to make the body's public records "available for inspection and copying by the public." Therefore, the public governmental body may require requesters to photocopy for themselves records made available by the custodian.

Must members of a public governmental body be physically present at a meeting to vote?

The Sunshine Law generally allows members of a public governmental body to participate in a meeting and vote without being physically present, for example, by telephone. But if a public governmental body consists of members who are all elected, Section 610.015 requires that members be physically present and in attendance at a meeting when votes are to be taken by roll call. In an emergency, less than a quorum of the body may participate by phone, Internet or other means, but only if a quorum of the members are physically present at the meeting location.

The physical presence requirement does not apply to any committee established by a public governmental body or to members of the General Assembly.

What procedures must be followed to close meetings, records or votes?

It is the public policy of this state that all public meetings and records shall be open unless otherwise provided by law (*Section 610.011.1*). The public governmental body must follow the procedures set out in Section 610.022 if a public meeting is related to one or more of the statutory exceptions and may be closed under Section 610.021.

Section 610.022.3 requires that the meeting be closed only to the extent necessary to discuss the specific announced exception. No other business should be discussed during the closed meeting. Also, the public governmental body may only close a portion of the meeting facility, allowing space for the public to remain and attend any subsequent open session.

A public governmental body planning to hold a vote must follow the notice procedures for a regular meeting set out in Section 610.020, adding that the meeting will be closed and citing the specific exception allowing the closure (*Section 610.022.2*). Notice of a closed meeting is not required to include a tentative agenda (*Attorney General's Opinion No. 97-90*).

Section 610.022.1 provides that before a meeting or a vote is closed, there must be an affirmative public vote to close the meeting made by a



majority of a quorum of the public governmental body. The specific reason for closing the meeting must be announced publicly, with reference to the proper statutory section, in open session and entered into the minutes.

Minutes of the closed meeting must be taken. The minutes must include, but are not limited to, the time, date, place, members present and absent and a record of votes taken during the closed session (*Section 610.020.7*).

What procedures may be followed if a member of a public body thinks a meeting, record or vote is closed in violation of the Sunshine Law?

The member must state an objection at or before the time the vote on the improper motion is made, and the objection will be entered into the minutes. Any member making an objection will be allowed to continue to participate in the meeting, record or vote.

This objection, accompanied by a vote against closing the meeting, record or vote in question, acts as an absolute defense in any claim for violations of the Sunshine Law brought under Section 610.027 (*Section 610.022.6*).

Can a public governmental body close a meeting to discuss possible litigation with its attorney where a cause of action has not been filed?

Section 610.021(1) permits a meeting to be closed to discuss legal actions, causes of action or litigation involving the public governmental body and confidential or privileged communications between the public governmental body and its attorneys. Attorney General's Opinion No. 59-76 concluded a meeting could be closed to discuss causes of action where the public governmental body is a potential plaintiff or defendant, whether or not litigation already had commenced.

However, under Section 610.021(1), any minutes, vote or settlement agreement relating to legal actions, causes of action or litigation must be made public upon final disposition of the matter voted upon or upon the signing of the settlement agreement. A court can, however, order that a settlement agreement be kept confidential if it finds that the adverse

impact on the plaintiff outweighs the policy of openness. Even then, the governmental body must disclose the amount paid under the agreement.

In matters concerning the exercise of the power of eminent domain, the vote must be made public immediately following action on the motion to authorize the legal action.

Can disciplinary action be taken against a particular public employee in a closed meeting, and can the public find out what action was taken?

Under Section 610.021(3) of the Sunshine Law, a public governmental body can close a meeting to consider hiring, firing, disciplining or promoting an employee when personal information about the employee is discussed or recorded. Personal information relates to the performance or merit of that employee. But the vote on any final decision to hire, fire, discipline or promote an employee must be made available to the public within 72 hours after the closed meeting in which such action occurred and must include how each member voted. The employee must be given notice of the decision during the 72-hour period before the decision is made available to the public.

Can a meeting be closed to allow a public governmental body to discuss whether public employees will participate in seminars or training programs?

Section 610.021(3) allows a meeting to be closed for discussion of hiring, firing, disciplining or promoting a particular employee. Because participation in a seminar does not fit these specific categories, the discussion should occur in an open meeting.

Who is an employee for purposes of the hiring, firing, disciplining or promoting exception set out in Section 610.021(3)?

Generally, an employee receives wages or a salary from the government. For example, a physician on staff at a public hospital who renders service on behalf of and is paid by the hospital district is an employee (*Paskon v. Salem Memorial Hospital District*, 806 S.W.2d 417 (Mo. App. S.D. 1991)). But independent contractors, members of



volunteer citizen boards and elected officials are not employees for purposes of Section 610.021(3). (*See Attorney General's Opinions Nos. 48-88, 184-89 and 77-92; and Hawkins v. City of Fayette*, 604 S.W.2d 716 (Mo. App. W.D. 1980)). Therefore, discussions about these individuals must be conducted in open session.

Can a public governmental body close a meeting to discuss the purchase of real estate?

Section 610.021(2) provides a meeting may be closed to discuss leasing, purchasing or selling of real estate by a public governmental body where public knowledge of the transaction could adversely affect the amount paid in the transaction. However, any minutes or vote approving a contract relating to such matters must be made public upon execution of the transaction.

What is involved in making a vote taken in a closed meeting available to the public as required in sections 610.021(1), (2) and (3), relating to litigation, real estate transactions and hiring, firing, disciplining and promoting employees?

After a closed meeting, the public governmental body must disclose the vote of each member — not just the vote total or results (*Section 610.021(3); Attorney General's Opinion No. 129-97*). The “vote” also includes the proposition voted on and matters or materials referred to within the proposition (*Attorney General's Opinion No. 30-88*). For example, disclosure of a vote according to Section 610.021(1) would include disclosing agreements made to settle litigation. Thus, making a personnel-related vote available to the public included disclosure of a severance agreement (*Librach v. Cooper*, 778 S.W.2d 351 (Mo. App. E.D. 1989)).

Disclosure of the purchase price of real estate is required by Section 610.021(2) upon execution of the purchase or sale of the real estate. However, the disclosure can be deferred until the entire real estate transaction is completed (*City of St. Louis v. City of Bridgeton*, 806 S.W.2d 717 (Mo. App. E.D. 1991)).

Who can bring an action charging a public governmental body or its members with a violation of the Sunshine Law?

Section 610.027.1 provides that an action seeking judicial enforcement of the Sunshine Law may be brought by any aggrieved person, taxpayer, or citizen of this state, by the prosecuting attorney or by the Attorney General. The suit must be filed in the circuit court in the county where the public governmental body has its principal place of business.

If a court finds a public governmental body has violated the Sunshine Law, what happens?

Under Section 610.027.5, if a court finds that any provision of the Sunshine Law has been violated by a public governmental body, the court may void any action taken in violation of the law. But the court will do so only if it concludes the public interest in enforcing the Sunshine Law outweighs the public interest in allowing the action to stand.

What other remedies exist when a public governmental body or its members violate the Sunshine Law?

If a court finds that a public governmental body or its members have “knowingly” violated the Sunshine Law, it shall order the body or members to pay a civil fine of up to \$1,000. The court also may order the body or members to pay all costs incurred in the suit and reasonable attorney fees to any party successfully establishing a violation of the Sunshine Law (*Section 610.027.3*).

If a court finds that a public governmental body or its members have “purposely” violated the Sunshine Law, it shall order the body or its members to pay a civil fine of up to \$5,000. If the court finds a purposeful violation, it shall order the body or its members to pay all costs incurred in the suit and reasonable attorney fees to any party successfully establishing a violation of the Sunshine Law (*Section 610.027.4*).

The amount of penalties in all cases depends on the size of the jurisdiction, the seriousness of the offense and whether the governmental body or its members have previously violated the Sunshine Law.



Has anyone been ordered to pay a fine or attorney fees?

Yes. For example, in *Tipton v. Barton*, 747 S.W.2d 325 (Mo. App. E.D. 1988), upon finding a purposeful violation of the Sunshine Law, the court ordered an award of \$750 for attorney fees. Civil fines were ordered in *The Kansas City Star Company v. Shields*, 771 S.W.2d 101 (Mo. App. W.D. 1989). In *Charlier v. Corum*, 794 S.W.2d 676 (Mo. App. W.D. 1990), the court ordered payment of a civil fine and attorney fees of \$5,219.91.

How can a public governmental body, its members and employees demonstrate they have acted in compliance with the Sunshine Law?

Under Section 610.027.2, once a party seeking judicial enforcement of the Sunshine Law has established the entity involved is a public governmental body and has held a closed meeting, record or vote, the burden is on the body and its members to demonstrate compliance with the Sunshine Law. To avoid penalties, the public governmental body should strictly comply with the Sunshine Law — and carefully record its compliance. Thus, for example, the public governmental body should maintain in its records the notices of meetings posted in accordance with Section 610.020. Its minutes should reflect the reasons why a meeting was held on less than 24 hours' notice or at a time or place that was not reasonably convenient and accessible to the public (*Section 610.020.3*). The minutes should also include the vote of each member of a public governmental body to close a meeting, vote or record and the specific statutory exception relied upon to close (*Section 610.022.1*). And during a closed session, copious notes of the discussion should be taken to demonstrate, if necessary, that the discussion was limited to the reason announced for closing the meeting.

Employees of public governmental bodies are subject to a slightly different standard. Under Section 610.028.2, public governmental bodies are required to establish and provide for public inspection a reasonable written policy concerning the release of information concerning any meeting, record or vote. Because an employee acting in compliance with this written policy will not be subject to civil liability, employees should carefully follow both the law itself and their employer's policy.

Are public governmental bodies required to take minutes of meetings?

Yes. Minutes of open and closed meetings should include, at a minimum, date, time, place, members present and members absent, and votes attributed to each member (*Section 610.020.7*). It also is advisable for bodies to keep minutes of the discussion that takes place during meetings, especially of closed meetings. These minutes are useful for internal purposes and for creating a record to justify the proper closure of a meeting under *Section 610.021*.

Do minutes retained in “draft” form have to be provided to the public within three business days of the request?

Yes. A draft of minutes is a “public record” under *Section 610.010(6)* and must be provided as soon as possible and no later than the end of the third business day after the request is received (*Section 610.023.3*). A public body that provides draft minutes should inform the requestor that the minutes are in draft form and will not be “official” until approved at the next regularly scheduled meeting of that public body.



Interpretations of the law

In 1987, 1998 and again in 2004, the Missouri General Assembly significantly amended Chapter 610 (the Sunshine Law), expressing a strong, continued commitment to openness in government. The Sunshine Law continues to evolve as courts and the Attorney General, through the issuance of opinions, join the Legislature in responding to changing conditions.

Here are summaries of Attorney General Opinions and Missouri court decisions regarding the Sunshine Law. Please note that the law cited may have been amended, especially for older opinions and court decisions.

ATTORNEY GENERAL OPINIONS

OPINION NO. 18-81

Once a public governmental body has properly voted to close a meeting, all members of the general public should be removed from the meeting. The governmental body cannot discriminate in which members of the public it might wish to remove or allow to stay.

Note: The case of Smith v. Sheriff, 982 S.W.2d 775 (Mo. App. E.D. 1998) (page 31), recognizes that a body may allow certain members of the public into a closed meeting to provide information to the body.

OPINION NO. 67-87

The Student Government Association of Southwest Missouri State University is not generally considered a public governmental body subject to the Sunshine Law, although the Sunshine Law may be applicable to the Student Government Association under certain circumstances.

OPINION NO. 103-88

The Missouri School Boards Association is a “quasi-public governmental body” and subject to provisions of Chapter 610, RSMo, the Sunshine Law.

OPINION NO. 89-89

If a public governmental body retains copies of records of the information set out in Section 290.290, RSMo, 1986, they are public records and must be made available for inspection and copying pursuant to Section 610.023.

OPINION NO. 184-89

Section 610.021(3) does not authorize a city's governing body to close a meeting when considering appointments of volunteers to citizen boards.

OPINION NO. 78-90

The circuit clerk, prosecuting attorney and circuit judge are not required to release to the media and public the names of members of a grand jury.

OPINION NO. 97-90

Pursuant to Section 610.022.2, notice of a closed meeting of a public governmental body must include the time, date and place of the meeting and a reference to the specific statutory exception allowing the meeting to be closed; however, notice of a closed meeting is not required to include a tentative agenda.

OPINION NO. 117-91

Property record cards prepared and retained by a county assessor are public records, to be made available for inspection and copying as provided in Section 610.023.

OPINION NO. 77-92

For purposes of 610.021(3) and (13), an elected mayor and elected city council members are not employees of a city; a city clerk and finance director, who are appointed and are paid, are employees; and members of a citizen board, who are appointed but not paid, are not employees.

OPINION NO. 80-93

Records relating to permits to acquire a concealable firearm retained by a county sheriff as required by Section 571.090.5, RSMo Supp. 1992, are public records open to inspection.

Note: Missouri's concealed-carry law contains its own confidentiality provisions (Section 571.101.9, RSMo Supp. 2003).



OPINION NO. 192-94

Telephone billing records of an individual member of the General Assembly are public records as defined by Section 610.010(6), RSMo Supp. 1993, to be made available for inspection and copying as provided in Sections 610.023 through 610.026, RSMo Supp. 1993.

OPINION NO. 68-95

Reference to the number of the relevant subdivision in Section 610.021's list of exceptions to openness (for example, Section 610.021(1)) is sufficient to meet the requirement of Section 610.022, which requires a public body to announce the reason for closing a meeting. A recitation of the words in the relevant subdivision is not required.

OPINION NO. 151-95

Citizens are authorized to videotape city council meetings if the taping is not obtrusive, based on the policy set out in Section 610.011.

Note: Section 610.020.3 has since been revised to expressly permit taping of open meetings.

OPINION NO. 158-95

Pursuant to sections 610.105 and 610.120, a city auditor does not have authority to inspect municipal court records of dismissed or nolle prossed cases. They may only be inspected by the entities listed in Section 610.120.

OPINION NO. 106-96

Pursuant to sections 79.200 and 610.120, a mayor may review an appointed city prosecutor's past prosecution record because the mayor is from a "law enforcement agency" and the review is related to "criminal justice employment."

OPINION NO. 82-97

If a city council member is absent from a meeting that is closed pursuant to Section 610.021(3), the council member should have access to the minutes from the closed portion.

OPINION NO. 129-97

The vote of **each** school board member must be available to the public on votes to hire, fire, discipline or promote particular employees in a closed meeting pursuant to Section 610.021(3). But the information considered during the closed meeting and before the actual vote is taken does not have to be disclosed.

OPINION NO. 153-98

A request for a public record to be provided in a format other than paper, in this case microfilm, must be honored if the public governmental body is able to reproduce the record in that format.

Note: Section 610.023.3 has since been amended to require that if records are requested in a certain format, and that format is available, the public body shall provide the records in the requested format.

OPINION NO. 97-2000

A public governmental body may decide in closed session pursuant to Section 610.021(2), RSMo, to enter into a contract that includes an option to purchase real estate at a particular price if the consideration for that contract could be affected by discussions in open sessions. However, within 72 hours of its decision the public governmental body must make public any minutes, votes or records relating to its decision.

Note: Section 610.021(2) has since been amended to require disclosure of minutes, votes and records upon execution of the lease, purchase or sale.

OPINION NO. 235-2000

The board of aldermen may review a city employee's personnel file if it is necessary to care, manage or control the city. The authority may be delegated through resolution or ordinance to one or more members of the board.

OPINION NO. 255-2000

Provisions of the Sunshine Law apply to a board of visitors created by Section 221.320, RSMo.



OPINION NO. 274-2000

The Sunshine Law requires disclosure of the race of the arrested person and the arrest location if that information is contained in the arrest report and the arrest report is not closed under the Sunshine Law.

OPINION NO. 95-2001

The names, addresses and water bills of customers of a public water supply district are records subject to disclosure under Chapter 610, RSMo. This does not apply to other information such as Social Security numbers.

OPINION NO. 100-2001

A sheltered workshop established by a nonprofit corporation is a quasi-public governmental body and its financial records are subject to provisions of Chapter 610, RSMo.

OPINION NO. 106-2001

The board of jury commissioners is a public governmental body and when it performs its duties pursuant to Chapter 494, RSMo, it is acting in an administrative role. Since the board of jury commissioners is a public governmental body, it is not exempt from the Sunshine Law, and if it retains the qualified jury list or prospective jury list, the board of jury commissioners is responsible for providing copies if requested under Chapter 610, RSMo.

OPINION NO. 117-2001

A city council with a city manager form of government may go into closed session to discuss personnel matters involving any city employee.

OPINION NO. 168-2001

When the securities commissioner or Department of Insurance makes a proper request for information about a financial institution, the Division of Finance may provide the information, which otherwise would be prohibited from disclosure, pursuant to Section 610.032 without a court order.

OPINION NO. 37-2003

Section 211.321 requires that, with certain exceptions, those portions of juvenile court records and law enforcement records identifying juveniles must be kept confidential. So if a law enforcement record involving a juvenile would otherwise be an open record, the law enforcement agency responding to a request for that record should redact identifying information about the juvenile and release the remainder of the record.

OPINION NO. 126-2003

The Sunshine Law requires an election authority to release a record of voter registration information to a newspaper and to provide a copy in CD-ROM format if available.

OPINION NO. 143-2003

A citizen's advisory committee is a public governmental body and records of communications from members of the committee or city staffers to a private consultant are public records. The city is obligated to retrieve public records it has given to a private consultant and make the records accessible to the public.



COURT DECISIONS

KANSAS CITY STAR COMPANY v. SHIELDS, 771 S.W.2d 101 (Mo. App. W.D. 1989)

A violation of the Sunshine Law occurred when three members of a four-person budget committee of the city council met with the city budget officer and city manager and discussed the city budget in a luncheon meeting that was not announced as required by 610.020.

CHARLIER v. CORUM, 774 S.W.2d 518 (Mo. App. W.D. 1989)

A county sheriff is a “public governmental body” within the meaning of Section 610.010(4) because the office of sheriff is an administrative entity created by state statute.

LIBRACH v. COOPER, 778 S.W.2d 351 (Mo. App. E.D. 1989)

A severance agreement reached between a school district and superintendent is a public record to be made available for inspection and copying.

DEFINO v. CIVIC CENTER CORP., 780 S.W.2d 665 (Mo. App. E.D. 1989)

No issue of a Sunshine Law violation was presented to the court where less than a quorum of a board of aldermen met with constituents. The court determined the Sunshine Law does not require public notice of every meeting between a constituent and an alderman.

FITZGERALD v. CITY OF MARYLAND HEIGHTS, 796 S.W.2d 52 (Mo. App. E.D. 1990)

The failure of city council to follow the Sunshine Law’s notice requirements did not excuse the mayor from his failure to comply with a directive adopted by the council in a meeting where he was present.

MISSOURI PROTECTION AND ADVOCACY SERVICES v. ALLAN, 787 S.W.2d 291 (Mo. App. W.D. 1990)

A preliminary draft of a report prepared by the U.S. Office of Special Education Programs in possession of the Missouri Department of Elementary and Secondary Education is a public record because it is a record retained by a public governmental body. Section 610.010(6) does not require a record to be in final form.

CHARLIER v. CORUM, 794 S.W.2d 676 (Mo. App. W.D. 1990)

A county sheriff purposely violated the Sunshine Law when he refused to make public records available. Neither the sheriff's "good faith" belief that he was not a "public governmental body" nor the fact that he acted upon advice of legal counsel relieved him from liability. More recently, the Missouri Supreme Court in *Spradlin v. City of Fulton*, 982 S.W.2d 255 (Mo.banc 1998), denied attorney fees when the public body did not purposely violate the Sunshine Law.

**CITY OF ST. LOUIS v. CITY OF BRIDGETON,
806 S.W.2d 717 (Mo. App. E.D. 1991)**

A public governmental body purchasing a number of contiguous parcels in a single subdivision is authorized to close records relating to the price paid for one parcel until all the parcels have been acquired.

**PASKON v. SALEM MEMORIAL HOSPITAL DISTRICT,
806 S.W.2d 417 (Mo. App. S.D. 1991)**

A physician accorded clinical privileges at a public hospital and paid an hourly wage for required shifts to staff the hospital emergency room was an employee within the meaning of Section 610.021(3) of the Sunshine Law.

WOLFSKILL v. HENDERSON, 823 S.W.2d 112 (Mo. App. W.D. 1991)

A police department's internal investigative files relating to the disciplining of a public employee are closed records pursuant to Section 610.021(3) and (13). But a grand jury may access these files (*State ex. rel. Jackson County v. Shinn*, 835 S.W.2d 347 (Mo. App. W.D. 1992)). Also, see *Guyer v. City of Kirkwood*, 38 S.W.3d 412 (Mo.banc 2001), where a complaint alleging criminal misconduct of a police officer becomes public once the investigation is inactive.

**PULITZER PUBLISHING CO. v. MISSOURI STATE EMPLOYEES'
RETIREMENT SYSTEM (MOSERS),
927 S.W.2d 477 (Mo. App. W.D. 1996)**

A public governmental body may not promulgate a rule to close public records where there is no statutory authority for that rule and the records appear to be public pursuant to Section 610.021(13).



DEATON v. KIDD, 932 S.W.2d 804 (Mo. App. W.D. 1996)

A public governmental body may not restrict public access to records by selling exclusive rights to computer tapes of public records to a bidder who then provides the records at a cost to the public.

COLOMBO v. BUFORD, 935 S.W.2d 690 (Mo. App. W.D. 1996)

Actions brought under Section 610.027 (alleged violations of the Sunshine Law) must be filed within six months after the plaintiffs are informed about the questionable meeting or when they could have ascertained a possible violation of law. Pursuant to Section 610.010, a **member** of a public governmental body is not a governmental body.

**CITY OF SPRINGFIELD v. EVENTS PUBLISHING CO.,
951 S.W.2d 366 (Mo. App. S.D. 1997)**

Names and addresses of utility customers are public records unless those customers request confidentiality. If a public governmental body seeks a judgment declaring whether a record is open or closed pursuant to Section 610.027.5, the body must pay both its own costs of bringing the action and the respondent's attorney fees.

**NEWS-PRESS AND GAZETTE CO. v. CATHCART,
974 S.W.2d 576 (Mo. App. W.D. 1998)**

A coroner is a public governmental body under Section 610.010. But an autopsy report used in an active investigation is an "investigative report" and is closed pursuant to Section 610.100.

**SPRADLIN v. CITY OF FULTON,
982 S.W.2d 255 (Mo.banc 1998)**

A city's closed-meeting discussions of a proposed golf course violate the Sunshine Law when the discussions do not involve the city's proposed lease of that golf course pursuant to Section 610.021(2). However, the city is not liable for attorney fees unless its violation is purposeful pursuant to Section 610.027.3, RSMo.

But see revised Section 610.027.3 which allows attorney fees to be assessed for a knowing violation.

SMITH v. SHERIFF, 982 S.W.2d 775 (Mo. App. E.D. 1998)

A school board did not violate the Sunshine Law when it allowed certain members of the public to attend a closed meeting to provide information involving the rehiring of a teacher.

But note that a body may not arbitrarily discriminate in admitting members of the public into a closed meeting. See Attorney General Opinion No. 18-81.

NORTH KANSAS CITY HOSPITAL BOARD OF TRUSTEES v. ST. LUKE'S NORTHLAND HOSPITAL, 984 S.W.2d 113 (Mo. App. W.D. 1998)

A nonprofit corporation created to carry out the purposes of a municipal hospital and controlled by the hospital's board of trustees is a quasi-public governmental body and therefore is subject to the Sunshine Law.

HEMEYER v. KRCG-TV, 6 S.W.3d 880 (Mo.banc 1999)

A security videotape of a booking at a county jail is a public record even though the videotape is retained for only days. Also, a public body that brings an action under Section 610.027.5 to determine its responsibility under the Sunshine Law is liable for reasonable attorney fees because the body brings suit at its own expense under that section.

SNL SECURITIES, L.C. v. NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, 23 S.W.3d 734 (Mo. App. W.D. 2000)

A national association of the chief insurance regulators of all 50 states did not constitute a quasi-public governmental body and therefore was not required to comply with the Sunshine Law.

GUYER v. CITY OF KIRKWOOD, 38 S.W.3d 412 (Mo.banc 2001)

A complaint alleging criminal misconduct by a police officer is an "incident report" and a report concerning investigation into the complaint is an "investigative report" under Section 610.100. Those records can be closed only on grounds specified in Section 610.100 for closing law enforcement records. They cannot be closed under Section 610.021(3) or (13) on grounds that they are personnel records or related to disciplining or firing of an employee.



**CALVERT V. MEHLVILLE R-IX SCHOOL DISTRICT,
44 S.W.3d 455 (Mo. App. E.D. 2001)**

A school district is required to make public its vote to approve a settlement agreement with a former teacher. Accordingly the teacher is not entitled to damages for breach of a confidentiality provision in the settlement agreement when the district disclosed the existence of the agreement.

**STEWART v. WILLIAMS COMMUNICATIONS, INC.,
85 S.W.3d 29 (Mo. App. W.D. 2002)**

A private, for-profit corporation that lacks the power to formulate public policy, make rules or tax and is not one of the specific entities included in the definition is not a public governmental body as defined in Section 610.010(4). Thus, the fact that a utility company possessed eminent domain power did not make it a public governmental body.

**ANDERSON v. VILLAGE OF JACKSONVILLE,
103 S.W.3d 190 (Mo. App. W.D. 2003)**

Anyone seeking access to public records must communicate a request in language that a reasonably competent custodian of the records would understand. The custodian must be able to identify records with reasonable specificity in order to be able to provide access to them.

**STATE EX REL. MOORE V. BREWSTER,
116. S.W.3d 630 (Mo. App. E.D. 2003)**

A report on alleged misconduct by two school board members is a closed record as legal work product, but must be shared with all board members. Attorney fees are awarded against the board because of failure to appoint a custodian of records.

Sample forms

That can be used by public governmental bodies

For your convenience, sample forms that may be used by public governmental bodies are provided on the following pages:

Resolution

This is a requirement of the revised Sunshine Law and may be adopted by public governmental bodies as required by Section 610.028, RSMo. **Page 34**

Forms on Web

These sample forms are available on the Attorney General's Web site at **www.ago.mo.gov** under the "Sunshine Law" listing.

Notice of open meeting

This suggested form is intended for use when a public governmental body plans to conduct an open meeting. **Page 35**

Notice of closed meeting

This suggested form is intended for use when a public governmental body has voted to close a future meeting and otherwise conformed with state law. **Page 36**

Notice of open meeting and vote to close part of the meeting

This suggested form is intended for use when a public governmental body plans to conduct a meeting that is partially open and partially closed but has not yet publicly voted to close the meeting and has otherwise conformed with state law. **Page 37**

Request to have objection to closed meeting entered into minutes

This suggested form is intended for use when a member of a public governmental body objects to a motion to close a meeting pursuant to Section 610.022.6 and wishes to have the objection entered into the minutes. **Page 38**

Resolution

This is a requirement of the revised Sunshine Law and may be adopted by public governmental bodies as required by Section 610.028, RSMo.

WHEREAS, Section 610.023.1, RSMo, provides that a public governmental body is to appoint a custodian to maintain that body's records and the identity and location of the custodian is to be made available upon request; and

WHEREAS, Section 610.026, RSMo, sets forth that a public governmental body shall provide access to and, upon request, furnish copies of public records; and

WHEREAS, Section 610.028.2, RSMo, provides that a public governmental body shall provide a reasonable written policy in compliance with sections 610.010 to 610.030, RSMo, commonly referred to as the Sunshine Law, regarding the release of information on any meeting, record or vote.

NOW, THEREFORE, BE IT RESOLVED:

1. That (insert name of custodian) be and hereby is appointed custodian of the records of (insert name of public governmental body) and that such custodian is located at (insert specific location, including room, street, address, city and state).

2. That said custodian shall respond to all requests for access to or copies of a public record within the time period provided by statute except in those circumstances authorized by statute.

3. That the fees to be charged for access to or furnishing copies of records shall be as hereinafter provided: (Insert fee schedule.

Note: Fees may not exceed 10 cents per page for paper copies 9 by 14 or smaller, plus an hourly fee for duplicating time not to exceed the average hourly rate of pay for clerical staff of the public governmental body.

Research time may be billed at actual cost.)

4. That it is the public policy of (insert name of public governmental body) that meetings, records, votes, actions and deliberations of this body shall be open to the public unless otherwise provided by law.

5. That (insert name of governmental body) shall comply with sections 610.010 to 610.030, RSMo, the Sunshine Law, as now existing or hereafter amended.

Notice of open meeting

This suggested form is intended for use when a public governmental body plans to conduct an open meeting.

(Insert date and time notice was posted)

Notice is hereby given that the

(insert name of public governmental body) will conduct a meeting at (insert time) on (insert day, month and year) at (insert place where meeting is to be held, or, if the meeting will be conducted by telephone or other electronic means, the location where the public may observe and attend the meeting or directions to access the meeting electronically).

The tentative agenda of this meeting includes (list topics):

The news media may obtain copies of this notice by contacting:

Insert name _____

Insert address _____

Insert phone number _____

Notice of closed meeting

This suggested form is intended for use when a public governmental body has voted to close a future meeting and otherwise conformed with state law.

(Insert date and time notice was posted)

Notice is hereby given that the

(insert name of public governmental body) having duly voted to close its upcoming meeting, as authorized by (insert statutory authority, including specific subsection of Section 610.021, to close meeting) will conduct a closed meeting at (insert time) on (insert day, month and year) at (insert place where meeting is to be held).

The news media may obtain copies of this notice by contacting:

Insert name _____

Insert address _____

Insert phone number _____

Notice of open meeting & vote to close part of the meeting

This suggested form is intended for use when a public governmental body plans to conduct a meeting that is partially open and partially closed but has not yet publicly voted to close the meeting and has otherwise conformed with state law.

(Insert date and time notice was posted)

Notice is hereby given that the

(insert name of public governmental body) will conduct a meeting at (insert time) on (insert day, month and year) at (insert place where meeting is to be held, or, if the meeting will be conducted by telephone or other electronic means, the location where the public may observe and attend the meeting or directions to access the meeting electronically).

The tentative agenda of this meeting includes (list topics):

The tentative agenda of this meeting also includes a vote to close part of this meeting pursuant to (insert statutory authority, including specific subsection of Section 610.021, for vote to close meeting).

The news media may obtain copies of this notice by contacting:

Insert name _____

Insert address _____

Insert phone number _____

Request to have objection to closed meeting entered into minutes

This suggested form is intended for use when a member of a public governmental body objects to a motion to close a meeting pursuant to Section 610.022.6 and wishes to have the objection entered into the minutes.

Dear (insert name of custodian or other person responsible for keeping minutes):

Having objected to the motion to close the meeting of (insert name of public governmental body) on (insert day, month and year) and having made this objection prior to the vote to close the meeting, I wish to have my objection entered into the minutes for that date.

Signature of member _____

Insert name of member _____

Sample request form

*Information that can be used to request records from
Missouri public governmental bodies*

For your convenience, a sample form is included on the next page that can be used to request records under the Missouri Sunshine Law.

On the Web

This sample form is available on the Attorney General's Web site at **www.ago.mo.gov** under the "Sunshine Law" listing.

THE SUNSHINE LAW: RECORDS REQUEST FORM

[Name and address of officially
designated custodian of records]

This is a request for records under the Missouri Sunshine Law,
Chapter 610, Revised Statutes of Missouri.

I request that you make available to me the following records:
_____ [Describe the records as specifically as possible. Where you are
asking for records that cover only a particular period, such as last year or
a specific month, identify that time period.]

**If you know the subject matter of the records, but do not have
additional information, use this alternative:**

I request that you make available to me all records that relate to
_____ [Be as specific as possible; include dates if you can.]

**If you want and are willing to pay for copies of the records, rather than
just being able to see them:**

I request that the records responsive to my request be copied
and sent to me at the following address: _____ .

**If you believe your request serves the public interest, and is not just for
personal or commercial interest, you may ask that the fees be waived:**

I request that all fees for locating and copying the records be
waived. The information I obtain through this request will be
used to _____ [Tell how you will use the information and why that use
is in the public interest.]

Please let me know in advance of any search or copying if the
fees will exceed \$_____ [Insert amount you are willing to pay without
additional information about the documents.]

If portions of the requested records are closed, please
segregate the closed portions and provide me with the rest of
the records.

[Your name, address, phone number or electronic mail address]

Chapter 610:

Governmental bodies & records

Revised Statutes of Missouri 2004

610.010. Definitions. As used in this chapter, unless the context otherwise indicates, the following terms mean:

- (1) **“Closed meeting”, “closed record”, or “closed vote”,** any meeting, record or vote closed to the public;
- (2) **“Copying”,** if requested by a member of the public, copies provided as detailed in section 610.026, if duplication equipment is available;
- (3) **“Public business”,** all matters which relate in any way to the performance of the public governmental body’s functions or the conduct of its business;
- (4) **“Public governmental body”,** any legislative, administrative or governmental entity created by the constitution or statutes of this state, by order or ordinance of any political subdivision or district, judicial entities when operating in an administrative capacity, or by executive order, including:
 - (a) Any body, agency, board, bureau, council, commission, committee, board of regents or board of curators or any other governing body of any institution of higher education, including a community college, which is supported in whole or in part from state funds, including but not limited to the administrative entity known as “The Curators of the University of Missouri” as established by section 172.020, RSMo;
 - (b) Any advisory committee or commission appointed by the governor by executive order;
 - (c) Any department or division of the state, of any political subdivision of the state, of any county or of any municipal

government, school district or special purpose district including but not limited to sewer districts, water districts, and other subdistricts of any political subdivision;

(d) Any other legislative or administrative governmental deliberative body under the direction of three or more elected or appointed members having rulemaking or quasi-judicial power;

(e) Any committee appointed by or at the direction of any of the entities and which is authorized to report to any of the above-named entities, any advisory committee appointed by or at the direction of any of the named entities for the specific purpose of recommending, directly to the public governmental body's governing board or its chief administrative officer, policy or policy revisions or expenditures of public funds including, but not limited to, entities created to advise bi-state taxing districts regarding the expenditure of public funds, or any policy advisory body, policy advisory committee or policy advisory group appointed by a president, chancellor or chief executive officer of any college or university system or individual institution at the direction of the governing body of such institution which is supported in whole or in part with state funds for the specific purpose of recommending directly to the public governmental body's governing board or the president, chancellor or chief executive officer policy, policy revisions or expenditures of public funds provided, however, the staff of the college or university president, chancellor or chief executive officer shall not constitute such a policy advisory committee. The custodian of the records of any public governmental body shall maintain a list of the policy advisory committees described in this subdivision;

(f) Any quasi-public governmental body. The term “**quasi-public governmental body**” means any person, corporation or partnership organized or authorized to do business in this state pursuant to the provisions of chapter 352, 353, or 355, RSMo, or unincorporated association which either:

- a. Has as its primary purpose to enter into contracts with public governmental bodies, or to engage primarily in activities carried

out pursuant to an agreement or agreements with public governmental bodies; or

b. Performs a public function as evidenced by a statutorily based capacity to confer or otherwise advance, through approval, recommendation or other means, the allocation or issuance of tax credits, tax abatement, public debt, tax-exempt debt, rights of eminent domain, or the contracting of leaseback agreements on structures whose annualized payments commit public tax revenues; or any association that directly accepts the appropriation of money from a public governmental body, but only to the extent that a meeting, record, or vote relates to such appropriation; and

(g) Any bi-state development agency established pursuant to section 70.370, RSMo;

(5) “Public meeting”, any meeting of a public governmental body subject to sections 610.010 to 610.030 at which any public business is discussed, decided, or public policy formulated, whether such meeting is conducted in person or by means of communication equipment, including, but not limited to, conference call, video conference, Internet chat, or Internet message board. The term “public meeting” shall not include an informal gathering of members of a public governmental body for ministerial or social purposes when there is no intent to avoid the purposes of this chapter, but the term shall include a public vote of all or a majority of the members of a public governmental body, by electronic communication or any other means, conducted in lieu of holding a public meeting with the members of the public governmental body gathered at one location in order to conduct public business;

(6) “Public record”, any record, whether written or electronically stored, retained by or of any public governmental body including any report, survey, memorandum, or other document or study prepared for the public governmental body by a consultant or other professional service paid for in whole or in part by public funds, including records

created or maintained by private contractors under an agreement with a public governmental body or on behalf of a public governmental body; provided, however, that personally identifiable student records maintained by public educational institutions shall be open for inspection by the parents, guardian or other custodian of students under the age of eighteen years and by the parents, guardian or other custodian and the student if the student is over the age of eighteen years. The term “public record” shall not include any internal memorandum or letter received or prepared by or on behalf of a member of a public governmental body consisting of advice, opinions and recommendations in connection with the deliberative decision-making process of said body, unless such records are retained by the public governmental body or presented at a public meeting. Any document or study prepared for a public governmental body by a consultant or other professional service as described in this subdivision shall be retained by the public governmental body in the same manner as any other public record;

(7) “**Public vote**”, any vote, whether conducted in person, by telephone, or by any other electronic means, cast at any public meeting of any public governmental body.

610.011. Liberal construction of law to be public policy.

1. It is the public policy of this state that meetings, records, votes, actions, and deliberations of public governmental bodies be open to the public unless otherwise provided by law. Sections 610.010 to 610.200 shall be liberally construed and their exceptions strictly construed to promote this public policy.

2. Except as otherwise provided by law, all public meetings of public governmental bodies shall be open to the public as set forth in Section 610.020, all public records of public governmental bodies shall be open to the public for inspection and copying as set forth in sections 610.023 to 610.026, and all public votes of public governmental bodies shall be recorded as set forth in section 610.015.

610.015. Votes, how taken.

Except as provided in section 610.021, rules authorized pursuant to Article III of the Missouri Constitution and as otherwise provided by law, all votes shall be recorded, and if a roll call is taken, as to attribute each “yea” and “nay” vote, or abstinence if not voting, to the name of the individual member of the public governmental body. Any votes taken during a closed meeting shall be taken by roll call. All public meetings shall be open to the public and public votes and public records shall be open to the public for inspection and duplication. All votes taken by roll call in meetings of a public governmental body consisting of members who are all elected, except for the Missouri general assembly and any committee established by a public governmental body, shall be cast by members of the public governmental body who are physically present and in attendance at the meeting. When it is necessary to take votes by roll call in a meeting of the public governmental body, due to an emergency of the public body, with a quorum of the members of the public body physically present and in attendance and less than a quorum of the members of the public governmental body participating via telephone, facsimile, Internet, or any other voice or electronic means, the nature of the emergency of the public body justifying that departure from the normal requirements shall be stated in the minutes. Where such emergency exists, the votes taken shall be regarded as if all members were physically present and in attendance at the meeting.

610.020. Notice of meetings, when required — accessibility of meetings — minutes of meetings to be kept, content — voting records to be included.

1. All public governmental bodies shall give notice of the time, date and place of each meeting, and its tentative agenda, in a manner reasonably calculated to advise the public of the matters to be considered, and if the meeting will be conducted by telephone or other electronic means, the notice of the meeting shall identify the mode by which the meeting will be conducted and the designated location where the public may observe and attend the meeting. If a public body plans to meet by Internet chat, Internet message board, or other computer link, it shall post a notice of

the meeting on its web site in addition to its principal office and shall notify the public how to access that meeting. Reasonable notice shall include making available copies of the notice to any representative of the news media who requests notice of meetings of a particular public governmental body concurrent with the notice being made available to the members of the particular governmental body and posting the notice on a bulletin board or other prominent place which is easily accessible to the public and clearly designated for that purpose at the principal office of the body holding the meeting, or if no such office exists, at the building in which the meeting is to be held.

2. Notice conforming with all of the requirements of subsection 1 of this section shall be given at least twenty-four hours, exclusive of weekends and holidays when the facility is closed, prior to the commencement of any meeting of a governmental body unless for good cause such notice is impossible or impractical, in which case as much notice as is reasonably possible shall be given. Each meeting shall be held at a place reasonably accessible to the public and of sufficient size to accommodate the anticipated attendance by members of the public, and at a time reasonably convenient to the public, unless for good cause such a place or time is impossible or impractical. Every reasonable effort shall be made to grant special access to the meeting to handicapped or disabled individuals.

3. A public body shall allow for the recording by audiotape, videotape, or other electronic means of any open meeting. A public body may establish guidelines regarding the manner in which such recording is conducted so as to minimize disruption to the meeting. No audio recording of any meeting, record, or vote closed pursuant to the provisions of section 610.021 shall be permitted without permission of the public body; any person who violates this provision shall be guilty of a class C misdemeanor.

4. When it is necessary to hold a meeting on less than twenty-four hours' notice, or at a place that is not reasonably accessible to the public, or at a time that is not reasonably convenient to the public, the nature of the

good cause justifying that departure from the normal requirements shall be stated in the minutes.

5. A formally constituted subunit of a parent governmental body may conduct a meeting without notice as required by this section during a lawful meeting of the parent governmental body, a recess in that meeting, or immediately following that meeting, if the meeting of the subunit is publicly announced at the parent meeting and the subject of the meeting reasonably coincides with the subjects discussed or acted upon by the parent governmental body.

6. If another provision of law requires a manner of giving specific notice of a meeting, hearing or an intent to take action by a governmental body, compliance with that section shall constitute compliance with the notice requirements of this section.

7. A journal or minutes of open and closed meetings shall be taken and retained by the public governmental body, including but not limited to a record of any votes taken at such meeting. The minutes shall include the date, time, place, members present, members absent and a record of any votes taken. When a roll call vote is taken, the minutes shall attribute each “yea” and “nay” vote or abstinence if not voting to the name of the individual member of the public governmental body.

610.021. Closed meetings and closed records authorized when, exceptions.

Except to the extent disclosure is otherwise required by law, a public governmental body is authorized to close meetings, records and votes, to the extent they relate to the following:

(1) Legal actions, causes of action or litigation involving a public governmental body and any confidential or privileged communications between a public governmental body or its representatives and its attorneys. However, any minutes, vote or settlement agreement relating to legal actions, causes of action or

litigation involving a public governmental body or any agent or entity representing its interests or acting on its behalf or with its authority, including any insurance company acting on behalf of a public government body as its insured, shall be made public upon final disposition of the matter voted upon or upon the signing by the parties of the settlement agreement, unless, prior to final disposition, the settlement agreement is ordered closed by a court after a written finding that the adverse impact to a plaintiff or plaintiffs to the action clearly outweighs the public policy considerations of section 610.011, however, the amount of any moneys paid by, or on behalf of, the public governmental body shall be disclosed; provided, however, in matters involving the exercise of the power of eminent domain, the vote shall be announced or become public immediately following the action on the motion to authorize institution of such a legal action. Legal work product shall be considered a closed record;

(2) Leasing, purchase or sale of real estate by a public governmental body where public knowledge of the transaction might adversely affect the legal consideration therefor. However, any minutes, vote or public record approving a contract relating to the leasing, purchase or sale of real estate by a public governmental body shall be made public upon execution of the lease, purchase or sale of the real estate;

(3) Hiring, firing, disciplining or promoting of particular employees by a public governmental body when personal information about the employee is discussed or recorded. However, any vote on a final decision, when taken by a public governmental body, to hire, fire, promote or discipline an employee of a public governmental body shall be made available with a record of how each member voted to the public within seventy-two hours of the close of the meeting where such action occurs; provided, however, that any employee so affected shall be entitled to prompt notice of such decision during the seventy-two-hour period before such decision is made available to the public. As used in this subdivision, the term **“personal information”** means information relating to the performance or merit of individual employees;

- (4) The state militia or National Guard or any part thereof;
- (5) Nonjudicial mental or physical health proceedings involving identifiable persons, including medical, psychiatric, psychological, or alcoholism or drug dependency diagnosis or treatment;
- (6) Scholastic probation, expulsion, or graduation of identifiable individuals, including records of individual test or examination scores; however, personally identifiable student records maintained by public educational institutions shall be open for inspection by the parents, guardian or other custodian of students under the age of eighteen years and by the parents, guardian or other custodian and the student if the student is over the age of eighteen years;
- (7) Testing and examination materials, before the test or examination is given or, if it is to be given again, before so given again;
- (8) Welfare cases of identifiable individuals;
- (9) Preparation, including any discussions or work product, on behalf of a public governmental body or its representatives for negotiations with employee groups;
- (10) Software codes for electronic data processing and documentation thereof;
- (11) Specifications for competitive bidding, until either the specifications are officially approved by the public governmental body or the specifications are published for bid;
- (12) Sealed bids and related documents, until the bids are opened; and sealed proposals and related documents or any documents related to a negotiated contract until a contract is executed, or all proposals are rejected;
- (13) Individually identifiable personnel records, performance ratings or records pertaining to employees or applicants for employment,

except that this exemption shall not apply to the names, positions, salaries and lengths of service of officers and employees of public agencies once they are employed as such, and the names of private sources donating or contributing money to the salary of a chancellor or president at all public colleges and universities in the state of Missouri and the amount of money contributed by the source;

(14) Records which are protected from disclosure by law;

(15) Meetings and public records relating to scientific and technological innovations in which the owner has a proprietary interest;

(16) Records relating to municipal hotlines established for the reporting of abuse and wrongdoing;

(17) Confidential or privileged communications between a public governmental body and its auditor, including all auditor work product; however, all final audit reports issued by the auditor are to be considered open records pursuant to this chapter;

(18) Operational guidelines and policies developed, adopted, or maintained by any public agency responsible for law enforcement, public safety, first response, or public health for use in responding to or preventing any critical incident which is or appears to be terrorist in nature and which has the potential to endanger individual or public safety or health. Nothing in this exception shall be deemed to close information regarding expenditures, purchases, or contracts made by an agency in implementing these guidelines or policies. When seeking to close information pursuant to this exception, the agency shall affirmatively state in writing that disclosure would impair its ability to protect the safety or health of persons, and shall in the same writing state that the public interest in nondisclosure outweighs the public interest in disclosure of the records. This exception shall sunset on December 31, 2008;

(19) Existing or proposed security systems and structural plans of real property owned or leased by a public governmental body, and information that is voluntarily submitted by a nonpublic entity owning or operating an infrastructure to any public governmental body for use by that body to devise plans for protection of that infrastructure, the public disclosure of which would threaten public safety:

(a) Records related to the procurement of or expenditures relating to security systems purchased with public funds shall be open;

(b) When seeking to close information pursuant to this exception, the public governmental body shall affirmatively state in writing that disclosure would impair the public governmental body's ability to protect the security or safety of persons or real property, and shall in the same writing state that the public interest in nondisclosure outweighs the public interest in disclosure of the records;

(c) Records that are voluntarily submitted by a nonpublic entity shall be reviewed by the receiving agency within ninety days of submission to determine if retention of the document is necessary in furtherance of a state security interest. If retention is not necessary, the documents shall be returned to the nonpublic governmental body or destroyed;

(d) This exception shall sunset on December 31, 2008;

(20) Records that identify the configuration of components or the operation of a computer, computer system, computer network, or telecommunications network, and would allow unauthorized access to or unlawful disruption of a computer, computer system, computer network, or telecommunications network of a public governmental body. This exception shall not be used to limit or deny access to otherwise public records in a file, document, data file or database

containing public records. Records related to the procurement of or expenditures relating to such computer, computer system, computer network, or telecommunications network, including the amount of moneys paid by, or on behalf of, a public governmental body for such computer, computer system, computer network, or telecommunications network shall be open; and

(21) Credit card numbers, personal identification numbers, digital certificates, physical and virtual keys, access codes or authorization codes that are used to protect the security of electronic transactions between a public governmental body and a person or entity doing business with a public governmental body. Nothing in this section shall be deemed to close the record of a person or entity using a credit card held in the name of a public governmental body or any record of a transaction made by a person using a credit card or other method of payment for which reimbursement is made by a public governmental body.

610.022. Closed meetings, procedure and limitation — public records presumed open unless exempt.

1. Except as set forth in subsection 2 of this section, no meeting or vote may be closed without an affirmative public vote of the majority of a quorum of the public governmental body. The vote of each member of the public governmental body on the question of closing a public meeting or vote and the specific reason for closing that public meeting or vote by reference to a specific section of this chapter shall be announced publicly at an open meeting of the governmental body and entered into the minutes.

2. A public governmental body proposing to hold a closed meeting or vote shall give notice of the time, date and place of such closed meeting or vote and the reason for holding it by reference to the specific exception allowed pursuant to the provisions of section 610.021. Such notice shall comply with the procedures set forth in section 610.020 for notice of a public meeting.

- 3.** Any meeting or vote closed pursuant to section 610.021 shall be closed only to the extent necessary for the specific reason announced to justify the closed meeting or vote. Public governmental bodies shall not discuss any business in a closed meeting, record or vote which does not directly relate to the specific reason announced to justify the closed meeting or vote. Public governmental bodies holding a closed meeting shall close only an existing portion of the meeting facility necessary to house the members of the public governmental body in the closed session, allowing members of the public to remain to attend any subsequent open session held by the public governmental body following the closed session.
- 4.** Nothing in sections 610.010 to 610.028 shall be construed as to require a public governmental body to hold a closed meeting, record or vote to discuss or act upon any matter.
- 5.** Public records shall be presumed to be open unless otherwise exempt pursuant to the provisions of this chapter.
- 6.** In the event any member of a public governmental body makes a motion to close a meeting, or a record, or a vote from the public and any other member believes that such motion, if passed, would cause a meeting, record or vote to be closed from the public in violation of any provision in this chapter, such latter member shall state his or her objection to the motion at or before the time the vote is taken on the motion. The public governmental body shall enter in the minutes of the public governmental body any objection made pursuant to this subsection. Any member making such an objection shall be allowed to fully participate in any meeting, record or vote that is closed from the public over the member's objection. In the event the objecting member also voted in opposition to the motion to close the meeting, record or vote at issue, the objection and vote of the member as entered in the minutes shall be an absolute defense to any claim filed against the objecting member pursuant to section 610.027.

610.023. Records of governmental bodies to be in care of custodian, duties — records may be copied but not removed, exception, procedure — denial of access, procedure.

1. Each public governmental body is to appoint a custodian who is to be responsible for the maintenance of that body's records. The identity and the location of a public governmental body's custodian is to be made available upon request.

2. Each public governmental body shall make available for inspection and copying by the public of that body's public records. No person shall remove original public records from the office of a public governmental body or its custodian without written permission of the designated custodian. No public governmental body shall, after August 28, 1998, grant to any person or entity, whether by contract, license or otherwise, the exclusive right to access and disseminate any public record unless the granting of such right is necessary to facilitate coordination with, or uniformity among, industry regulators having similar authority.

3. Each request for access to a public record shall be acted upon as soon as possible, but in no event later than the end of the third business day following the date the request is received by the custodian of records of a public governmental body. If records are requested in a certain format, the public body shall provide the records in the requested format, if such format is available. If access to the public record is not granted immediately, the custodian shall give a detailed explanation of the cause for further delay and the place and earliest time and date that the record will be available for inspection. This period for document production may exceed three days for reasonable cause.

4. If a request for access is denied, the custodian shall provide, upon request, a written statement of the grounds for such denial. Such statement shall cite the specific provision of law under which access is denied and shall be furnished to the requester no later than the end of the third business day following the date that the request for the statement is received.

610.024. Public record containing exempt and nonexempt materials, nonexempt to be made available — deleted exempt materials to be explained, exception.

1. If a public record contains material which is not exempt from disclosure as well as material which is exempt from disclosure, the public governmental body shall separate the exempt and nonexempt material and make the nonexempt material available for examination and copying.

2. When designing a public record, a public governmental body shall, to the extent practicable, facilitate a separation of exempt from nonexempt information. If the separation is readily apparent to a person requesting to inspect or receive copies of the form, the public governmental body shall generally describe the material exempted unless that description would reveal the contents of the exempt information and thus defeat the purpose of the exemption.

610.025. Electronic transmission of messages relating to public business, requirements.

Any member of a public governmental body who transmits any message relating to public business by electronic means shall also concurrently transmit that message to either the member's public office computer or the custodian of records in the same format. The provisions of this section shall only apply to messages sent to two or more members of that body so that, when counting the sender, a majority of the body's members are copied. Any such message received by the custodian or at the member's office computer shall be a public record subject to the exceptions of section 610.021.

610.026. Fees for copying public records, limitations — fee money remitted to whom — tax, license or fee as used in Missouri Constitution Article X section 22 not to include copying fees.

1. Except as otherwise provided by law, each public governmental body shall provide access to and, upon request, furnish copies of public records subject to the following:

(1) Fees for copying public records, except those records restricted under section 32.091, RSMo, shall not exceed ten cents per page for a paper copy not larger than nine by fourteen inches, with the hourly fee for duplicating time not to exceed the average hourly rate of pay for clerical staff of the public governmental body. Research time required for fulfilling records requests may be charged at the actual cost of research time. Based on the scope of the request, the public governmental body shall produce the copies using employees of the body that result in the lowest amount of charges for search, research, and duplication time. Prior to producing copies of the requested records, the person requesting the records may request the public governmental body to provide an estimate of the cost to the person requesting the records. Documents may be furnished without charge or at a reduced charge when the public governmental body determines that waiver or reduction of the fee is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the public governmental body and is not primarily in the commercial interest of the requester;

(2) Fees for providing access to public records maintained on computer facilities, recording tapes or disks, videotapes or films, pictures, maps, slides, graphics, illustrations or similar audio or visual items or devices, and for paper copies larger than nine by fourteen inches shall include only the cost of copies, staff time, which shall not exceed the average hourly rate of pay for staff of the public governmental body required for making copies and programming, if necessary, and the cost of the disk, tape, or other medium used for the duplication. Fees for maps, blueprints, or plats that require special expertise to duplicate may include the actual rate of compensation for the trained personnel required to duplicate such maps, blueprints, or plats. If programming is required beyond the customary and usual level to comply with a request for records or information, the fees for compliance may include the actual costs of such programming.

2. Payment of such copying fees may be requested prior to the making of copies.

3. Except as otherwise provided by law, each public governmental body of the state shall remit all moneys received by or for it from fees charged pursuant to this section to the director of revenue for deposit to the general revenue fund of the state.

4. Except as otherwise provided by law, each public governmental body of a political subdivision of the state shall remit all moneys received by it or for it from fees charged pursuant to sections 610.010 to 610.028 to the appropriate fiscal officer of such political subdivision for deposit to the governmental body's accounts.

5. The term "tax, license or fees" as used in section 22 of Article X of the Constitution of the state of Missouri does not include copying charges and related fees that do not exceed the level necessary to pay or to continue to pay the costs for providing a service, program, or activity which was in existence on November 4, 1980, or which was approved by a vote of the people subsequent to November 4, 1980.

610.027. Violations — remedies, procedure, penalty — validity of actions by governing bodies in violation — governmental bodies may seek interpretation of law, attorney general to provide.

1. The remedies provided by this section against public governmental bodies shall be in addition to those provided by any other provision of law. Any aggrieved person, taxpayer to, or citizen of, this state, or the attorney general or prosecuting attorney, may seek judicial enforcement of the requirements of sections 610.010 to 610.026. Suits to enforce sections 610.010 to 610.026 shall be brought in the circuit court for the county in which the public governmental body has its principal place of business. Upon service of a summons, petition, complaint, counterclaim, or cross-claim in a civil action brought to enforce the provisions of sections 610.010 to 610.026, the custodian of the public record that is the subject matter of such civil action shall not transfer custody, alter, destroy, or otherwise dispose of the public record sought to be inspected

and examined, notwithstanding the applicability of an exemption pursuant to section 610.021 or the assertion that the requested record is not a public record until the court directs otherwise.

2. Once a party seeking judicial enforcement of sections 610.010 to 610.026 demonstrates to the court that the body in question is subject to the requirements of sections 610.010 to 610.026 and has held a closed meeting, record or vote, the burden of persuasion shall be on the body and its members to demonstrate compliance with the requirements of sections 610.010 to 610.026.

3. Upon a finding by a preponderance of the evidence that a public governmental body or a member of a public governmental body has knowingly violated sections 610.010 to 610.026, the public governmental body or the member shall be subject to a civil penalty in an amount up to one thousand dollars. If the court finds that there is a knowing violation of sections 610.010 to 610.026, the court may order the payment by such body or member of all costs and reasonable attorney fees to any party successfully establishing a violation. The court shall determine the amount of the penalty by taking into account the size of the jurisdiction, the seriousness of the offense, and whether the public governmental body or member of a public governmental body has violated sections 610.010 to 610.026 previously.

4. Upon a finding by a preponderance of the evidence that a public governmental body or a member of a public governmental body has purposely violated section 610.010 to 610.026, the public governmental body or the member shall be subject to a civil penalty in an amount up to five thousand dollars. If the court finds that there was a purposeful violation of sections 610.010 to 610.026, then the court shall order the payment by such body or member of all costs and reasonable attorney fees to any party successfully establishing such a violation. The court shall determine the amount of the penalty by taking into account the size of the jurisdiction, the seriousness of the offense, and whether the public governmental body or member of a public governmental body has violated sections 610.010 to 610.026 previously.

5. Upon a finding by a preponderance of the evidence that a public governmental body has violated any provision of sections 610.010 to 610.026, a court shall void any action taken in violation of sections 610.010 to 610.026, if the court finds under the facts of the particular case that the public interest in the enforcement of the policy of sections 610.010 to 610.026 outweighs the public interest in sustaining the validity of the action taken in the closed meeting, record or vote. Suit for enforcement shall be brought within one year from which the violation is ascertainable and in no event shall it be brought later than two years after the violation. This subsection shall not apply to an action taken regarding the issuance of bonds or other evidence of indebtedness of a public governmental body if a public hearing, election or public sale has been held regarding the bonds or evidence of indebtedness.

6. A public governmental body which is in doubt about the legality of closing a particular meeting, record or vote may bring suit at the expense of that public governmental body in the circuit court of the county of the public governmental body's principal place of business to ascertain the propriety of any such action, or seek a formal opinion of the attorney general or an attorney for the governmental body.

610.028. Legal defense of members of governmental bodies, when — written policy on release of information required — persons reporting violations exempt from liability and discipline.

1. Any public governmental body may provide for the legal defense of any member charged with a violation of sections 610.010 to 610.030.

2. Each public governmental body shall provide a reasonable written policy in compliance with sections 610.010 to 610.030, open to public inspection, regarding the release of information on any meeting, record or vote and any member or employee of the public governmental body who complies with the written policy is not guilty of a violation of the provisions of sections 610.010 to 610.030 or subject to civil liability for any act arising out of his adherence to the written policy of the agency.

3. No person who in good faith reports a violation of the provisions of sections 610.010 to 610.030 is civilly liable for making such report, nor, if such a person is an officer or employee of a public governmental body, may such person be demoted, fired, suspended or otherwise disciplined for making such report.

610.029. Governmental agencies to provide information by electronic services, electronic services defined — division of data processing may be consulted.

1. A public governmental body keeping its records in an electronic format is strongly encouraged to provide access to its public records to members of the public in an electronic format. A public governmental body is strongly encouraged to make information available in useable electronic formats to the greatest extent feasible. A public governmental body may not enter into a contract for the creation or maintenance of a public records database if that contract impairs the ability of the public to inspect or copy the public records of that agency, including public records that are on-line or stored in an electronic recordkeeping system used by the agency. Such contract may not allow any impediment that as a practical matter makes it more difficult for the public to inspect or copy the records than to inspect or copy the public governmental body's records. For purposes of this section, a useable electronic format shall allow, at a minimum, viewing and printing of records. However, if the public governmental body keeps a record on a system capable of allowing the copying of electronic documents into other electronic documents, the public governmental body shall provide data to the public in such electronic format, if requested. The activities authorized pursuant to this section may not take priority over the primary responsibilities of a public governmental body. For purposes of this section the term "electronic services" means on-line access or access via other electronic means to an electronic file or data base. This subsection shall not apply to contracts initially entered into before August 28, 2004.

2. Public governmental bodies shall include in a contract for electronic services provisions that:

- (1) Protect the security and integrity of the information system of the public governmental body and of information systems that are shared by public governmental bodies; and
- (2) Limit the liability of the public governmental body providing the services.

3. Each public governmental body may consult with the division of data processing and telecommunications of the office of administration to develop the electronic services offered by the public governmental body to the public pursuant to this section.

610.030. Injunctive relief authorized.

The circuit courts of this state shall have the jurisdiction to issue injunctions to enforce the provisions of sections 610.010 to 610.115.

610.032. Executive agency disclosure of closed records, purpose, procedure — executive agency defined.

1. If an executive agency's records are closed by law, it may not disclose any information contained in such closed records in any form that would allow identification of individual persons or entities unless:

- (1) Disclosure of such information is made to a person in that person's official capacity representing an executive agency and the disclosure is necessary for the requesting executive agency to perform its constitutional or statutory duties; or
- (2) Disclosure is otherwise required by law.

2. Notwithstanding any other provision of law to the contrary, including, but not limited to, section 32.057, RSMo, such closed information may be disclosed pursuant to this section; however, the providing executive agency may request, as a condition of disclosing such information, that the requesting executive agency submit:

(1) The constitutional or statutory duties necessitating the disclosure of such information;

(2) The name and official capacity of the person or persons to whom such information will be disclosed;

(3) An affirmation that such information will be used only in furtherance of such constitutional or statutory duties; and

(4) The date upon which the access is requested to begin, when the request is for continuous access.

3. Any executive agency receiving such a request for closed information shall keep the request on file and shall only release such information to the person or persons listed on such request. If the request is for continuous access to such information, the executive agency shall honor the request for a period of one year from the beginning date indicated on such request. If the requesting executive agency requests such information for more than one year, the agency shall provide an updated request for closed information to the providing executive agency upon expiration of the initial request.

4. Any person receiving or releasing closed information pursuant to this section shall be subject to any laws, regulations or standards of the providing executive agency regarding the confidentiality or misuse of such information and shall be subject to any penalties provided by such laws, regulations or standards for the violation of the confidentiality or misuse of such information.

5. For the purposes of this section, “**executive agency**” means any administrative governmental entity created by the constitution or statutes of this state under the executive branch, including any department, agency, board, bureau, council, commission, committee, board of regents or board of curators of any institution of higher learning supported in whole or in part by state funds, any subdivision of an executive agency, and any legally designated agent of such entity.

610.035. State entity not to disclose social security number, exceptions.

No state entity shall publicly disclose any social security number unless such disclosure is permitted by federal law, federal regulation or state law or unless such disclosure is authorized by the holder of that social security number or unless such disclosure is for use in connection with any civil, criminal, administrative or arbitral proceeding in any federal, state or local court or agency or before any self-regulatory body, including the service of process, investigation in anticipation of litigation and the execution or enforcement of judgments and orders, or pursuant to an order of a federal, state or local court. For the purposes of this section, **“publicly disclose”** shall not include the use of any social security number by any state entity in the performance of any statutory or constitutional duty or power or the disclosure of any social security number to another state entity, political subdivision, agency of the federal government, agency of another state or any private person or entity acting on behalf of, or in cooperation with, a state entity. Any person or entity receiving a social security number from any entity shall be subject to the same confidentiality provisions as the disclosing entity. For purposes of this section, **“state entity”** means any state department, division, agency, bureau, board, commission, employee or any agent thereof. When responding to any requests for public information pursuant to chapter 610, any costs incurred by any state entity complying with the provisions of this section may be charged to the requester of such information.

ARREST RECORDS

610.100. Definitions — arrest and incident records shall be available to public — closed records, when — record redacted, when — access to incident reports, record redacted, when — action for disclosure of investigative report authorized, costs — application to open incident and arrest reports, civil penalty — identity of victim of sexual offense.

1. As used in sections 610.100 to 610.150, the following words and phrases shall mean:

(1) **“Arrest”**, an actual restraint of the person of the defendant, or by his or her submission to the custody of the officer, under authority of a warrant or otherwise for a criminal violation which results in the issuance of a summons or the person being booked;

(2) **“Arrest report”**, a record of a law enforcement agency of an arrest and of any detention or confinement incident thereto together with the charge therefor;

(3) **“Inactive”**, an investigation in which no further action will be taken by a law enforcement agency or officer for any of the following reasons:

(a) A decision by the law enforcement agency not to pursue the case;

(b) Expiration of the time to file criminal charges pursuant to the applicable statute of limitations, or ten years after the commission of the offense; whichever date earliest occurs;

(c) Finality of the convictions of all persons convicted on the basis of the information contained in the investigative report, by exhaustion of or expiration of all rights of appeal of such persons;

(4) **“Incident report”**, a record of a law enforcement agency consisting of the date, time, specific location, name of the victim and immediate facts and circumstances surrounding the initial report of a crime or incident, including any logs of reported crimes, accidents and complaints maintained by that agency;

(5) “Investigative report”, a record, other than an arrest or incident report, prepared by personnel of a law enforcement agency, inquiring into a crime or suspected crime, either in response to an incident report or in response to evidence developed by law enforcement officers in the course of their duties.

2. Each law enforcement agency of this state, of any county, and of any municipality, shall maintain records of all incidents reported to the agency, investigations and arrests made by such law enforcement agency. All incident reports and arrest reports shall be open records. Notwithstanding any other provision of law other than the provisions of subsections 4, 5 and 6 of this section or section 320.083, RSMo, investigative reports of all law enforcement agencies are closed records until the investigation becomes inactive. If any person is arrested and not charged with an offense against the law within thirty days of the person’s arrest, the arrest report shall thereafter be a closed record except that the disposition portion of the record may be accessed and except as provided in section 610.120.

3. Except as provided in subsections 4, 5, 6 and 7 of this section, if any portion of a record or document of a law enforcement officer or agency, other than an arrest report, which would otherwise be open, contains information that is reasonably likely to pose a clear and present danger to the safety of any victim, witness, undercover officer, or other person; or jeopardize a criminal investigation, including records which would disclose the identity of a source wishing to remain confidential or a suspect not in custody; or which would disclose techniques, procedures or guidelines for law enforcement investigations or prosecutions, that portion of the record shall be closed and shall be redacted from any record made available pursuant to this chapter.

4. Any person, including a family member of such person within the first degree of consanguinity if such person is deceased or incompetent, attorney for a person, or insurer of a person involved in any incident or whose property is involved in an incident, may obtain any records closed pursuant to this section or section 610.150 for purposes of investigation

of any civil claim or defense, as provided by this subsection. Any individual, his or her family member within the first degree of consanguinity if such individual is deceased or incompetent, his or her attorney or insurer, involved in an incident or whose property is involved in an incident, upon written request, may obtain a complete unaltered and unedited incident report concerning the incident, and may obtain access to other records closed by a law enforcement agency pursuant to this section. Within thirty days of such request, the agency shall provide the requested material or file a motion pursuant to this subsection with the circuit court having jurisdiction over the law enforcement agency stating that the safety of the victim, witness or other individual cannot be reasonably ensured, or that a criminal investigation is likely to be jeopardized. If, based on such motion, the court finds for the law enforcement agency, the court shall either order the record closed or order such portion of the record that should be closed to be redacted from any record made available pursuant to this subsection.

5. Any person may bring an action pursuant to this section in the circuit court having jurisdiction to authorize disclosure of the information contained in an investigative report of any law enforcement agency, which would otherwise be closed pursuant to this section. The court may order that all or part of the information contained in an investigative report be released to the person bringing the action. In making the determination as to whether information contained in an investigative report shall be disclosed, the court shall consider whether the benefit to the person bringing the action or to the public outweighs any harm to the public, to the law enforcement agency or any of its officers, or to any person identified in the investigative report in regard to the need for law enforcement agencies to effectively investigate and prosecute criminal activity. The investigative report in question may be examined by the court in camera. The court may find that the party seeking disclosure of the investigative report shall bear the reasonable and necessary costs and attorneys' fees of both parties, unless the court finds that the decision of the law enforcement agency not to open the investigative report was substantially unjustified under all relevant circumstances, and in that

event, the court may assess such reasonable and necessary costs and attorneys' fees to the law enforcement agency.

6. Any person may apply pursuant to this subsection to the circuit court having jurisdiction for an order requiring a law enforcement agency to open incident reports and arrest reports being unlawfully closed pursuant to this section. If the court finds by a preponderance of the evidence that the law enforcement officer or agency has knowingly violated this section, the officer or agency shall be subject to a civil penalty in an amount up to one thousand dollars. If the court finds that there is a knowing violation of this section, the court may order payment by such officer or agency of all costs and attorneys' fees, as provided by section 610.027. If the court finds by a preponderance of the evidence that the law enforcement officer or agency has purposely violated this section, the officer or agency shall be subject to a civil penalty in an amount up to five thousand dollars and the court shall order payment by such officer or agency of all costs and attorney fees, as provided in section 610.027. The court shall determine the amount of the penalty by taking into account the size of the jurisdiction, the seriousness of the offense, and whether the law enforcement officer or agency has violated this section previously.

7. The victim of an offense as provided in chapter 566, RSMo, may request that his or her identity be kept confidential until a charge relating to such incident is filed.

610.103. Criminal background check completed without fee, when.

Notwithstanding any other provision of law to the contrary, whenever a criminal background check is requested in connection with gaining employment, housing or any other services or benefit of any homeless former member of the organized militia or the armed forces of the United States who has been honorably discharged, such background check shall be completed and transmitted to the requesting party without any fee or other compensation for such background check or copy of any

relevant public record pertaining to such request. For purposes of this section “**homeless**” means an involuntary state characterized by a lack of housing or shelter.

610.105. Effect of nolle pros — dismissal — sentence suspended on record — not guilty due to mental disease or defect, effect.

If the person arrested is charged but the case is subsequently nolle prossed, dismissed, or the accused is found not guilty or imposition of sentence is suspended in the court in which the action is prosecuted, official records pertaining to the case shall thereafter be closed records when such case is finally terminated except as provided in section 610.120 and except that the court’s judgment or order or the final action taken by the prosecutor in such matters may be accessed. If the accused is found not guilty due to mental disease or defect pursuant to section 552.030, RSMo, official records pertaining to the case shall thereafter be closed records upon such findings, except that the disposition may be accessed only by law enforcement agencies, child-care agencies, facilities as defined in section 198.006, RSMo, and in-home services provider agencies as defined in section 660.250, RSMo, in the manner established by section 610.120.

610.106. Suspended sentence prior to September 28, 1981, procedure to close records.

Any person as to whom imposition of sentence was suspended prior to September 28, 1981, may make a motion to the court in which the action was prosecuted after his discharge from the court’s jurisdiction for closure of official records pertaining to the case. If the prosecuting authority opposes the motion, an informal hearing shall be held in which technical rules of evidence shall not apply. Having regard to the nature and circumstances of the offense and the history and character of the defendant and upon a finding that the ends of justice are so served, the court may order official records pertaining to the case to be closed, except as provided in section 610.120.

610.110. Failure to recite closed record excused — exceptions.

No person as to whom such records have become closed records shall thereafter, under any provision of law, be held to be guilty of perjury or otherwise of giving a false statement by reason of his failure to recite or acknowledge such arrest or trial in response to any inquiry made of him for any purpose, except as provided in section 491.050, RSMo, and section 610.120.

610.115. Penalty.

A person who knowingly violates any provision of sections 610.100, 610.105, 610.106, or 610.120 is guilty of a class A misdemeanor.

610.120. Records to be confidential — accessible to whom, purposes — child care, defined.

1. Records required to be closed shall not be destroyed; they shall be inaccessible to the general public and to all persons other than the defendant except as provided in this section and section 43.507, RSMo. The closed records shall be available to: criminal justice agencies for the administration of criminal justice pursuant to section 43.500, RSMo, criminal justice employment, screening persons with access to criminal justice facilities, procedures, and sensitive information; to law enforcement agencies for issuance or renewal of a license, permit, certification, or registration of authority from such agency including but not limited to watchmen, security personnel, private investigators, and persons seeking permits to purchase or possess a firearm; those agencies authorized by section 43.543, RSMo, to submit and when submitting fingerprints to the central repository; the sentencing advisory commission created in section 558.019, RSMo, for the purpose of studying sentencing practices in accordance with section 43.507, RSMo; to qualified entities for the purpose of screening providers defined in section 43.540, RSMo; the department of revenue for driver license administration; the division of workers' compensation for the purposes of determining eligibility for crime victims' compensation pursuant to sections 595.010 to 595.075, RSMo, department of health and senior

services for the purpose of licensing and regulating facilities and regulating in-home services provider agencies and federal agencies for purposes of criminal justice administration, criminal justice employment, child, elderly, or disabled care, and for such investigative purposes as authorized by law or presidential executive order.

2. These records shall be made available only for the purposes and to the entities listed in this section. A criminal justice agency receiving a request for criminal history information under its control may require positive identification, to include fingerprints of the subject of the record search, prior to releasing closed record information. Dissemination of closed and open records from the Missouri criminal records repository shall be in accordance with section 43.509, RSMo. All records which are closed records shall be removed from the records of the courts, administrative agencies, and law enforcement agencies which are available to the public and shall be kept in separate records which are to be held confidential and, where possible, pages of the public record shall be retyped or rewritten omitting those portions of the record which deal with the defendant's case. If retyping or rewriting is not feasible because of the permanent nature of the record books, such record entries shall be blacked out and recopied in a confidential book.

610.122. Arrest record expunged, requirements.

Notwithstanding other provisions of law to the contrary, any record of arrest recorded pursuant to section 43.503, RSMo, may be expunged if the court determines that the arrest was based on false information and the following conditions exist:

- (1) There is no probable cause, at the time of the action to expunge, to believe the individual committed the offense;
- (2) No charges will be pursued as a result of the arrest;
- (3) The subject of the arrest has no prior or subsequent misdemeanor or felony convictions;

(4) The subject of the arrest did not receive a suspended imposition of sentence for the offense for which the arrest was made or for any offense related to the arrest; and

(5) No civil action is pending relating to the arrest or the records sought to be expunged.

610.123. Procedure to expunge, supreme court to promulgate rules — similar to small claims.

1. Any person who wishes to have a record of arrest expunged pursuant to section 610.122 may file a verified petition for expungement in the civil division of the circuit court in the county of the arrest as provided in subsection 4 of this section. The petition shall include the following information or shall be dismissed if the information is not given:

(1) The petitioner's:

(a) Full name;

(b) Sex;

(c) Race;

(d) Date of birth;

(e) Driver's license number;

(f) Social security number; and

(g) Address at the time of the arrest;

(2) The offense charged against the petitioner;

(3) The date the petitioner was arrested;

(4) The name of the county where the petitioner was arrested and if the arrest occurred in a municipality, the name of the municipality;

(5) The name of the agency that arrested the petitioner;

(6) The case number and court of the offense;

(7) Petitioner's fingerprints on a standard fingerprint card at the time of filing a petition to expunge a record that will be forwarded to the central repository for the sole purpose of positively identifying the petitioner.

2. The petition shall name as defendants all law enforcement agencies, courts, prosecuting attorneys, central state depositories of criminal records or others who the petitioner has reason to believe may possess the records subject to expungement. The court's order shall not affect any person or entity not named as a defendant in the action.

3. The court shall set a hearing on the matter no sooner than thirty days from the filing of the petition and shall give reasonable notice of the hearing to each official or agency or other entity named in the petition.

4. If the court finds that the petitioner is entitled to expungement of any record that is the subject of the petition, it shall enter an order directing expungement. A copy of the order shall be provided to each agency identified in the petition pursuant to subsection 2 of this section.

5. The supreme court shall promulgate rules establishing procedures for the handling of cases filed pursuant to the provisions of this section and section 610.122. Such procedures shall be similar to the procedures established in chapter 482, RSMo, for the handling of small claims.

610.124. Destruction of arrest records — removal from all electronic files — FBI requested to expunge — protest to expungement, procedure.

1. All records ordered to be expunged pursuant to section 610.123 shall be destroyed, except as provided in this section. If destruction of the record is not feasible because of the permanent nature of the record books, such record entries shall be blacked out. Entries of a record ordered expunged pursuant to section 610.123 shall be removed from all electronic files maintained with the state of Missouri. The central repository shall request the Federal Bureau of Investigation expunge the records from its files.

2. Any petitioner, or agency protesting the expungement, may appeal the court's decision in the same manner as provided for other civil actions.

610.125. Failure to comply with expungement order, penalty — knowingly using expunged record for gain, penalty.

1. A person subject to an order of the court in subsection 4 of section 610.123 who knowingly fails to expunge or obliterate, or releases, arrest information which has been ordered expunged pursuant to section 610.123 is guilty of a class B misdemeanor.

2. A person subject to an order of the court in subsection 4 of section 610.123 who, knowing the records have been ordered expunged, uses the arrest information for financial gain is guilty of a class D felony.

610.126. Expungement does not deem arrest invalid — department of revenue may retain records necessary for administrative actions on driver's license — power to close or expunge record, limitation.

1. An expungement of an arrest record shall not reflect on the validity of the arrest and shall not be construed to indicate a lack of probable cause for the arrest.

2. Except as provided by sections 610.122 to 610.126, the courts of this state shall have no legal or equitable authority to close or expunge any arrest record.

3. The petitioner shall not bring any action subsequent to the expungement against any person or agency relating to the arrest described in the expunged records.

“911” REPORTS — CONFIDENTIAL**610.150. “911” telephone reports inaccessible, exceptions.**

Except as provided by this section, any information acquired by a law enforcement agency by way of a complaint or report of a crime made by telephone contact using the emergency number, “911”, shall be inaccessible to the general public. However, information consisting of the date, time, specific location and immediate facts and circumstances surrounding the initial report of the crime or incident shall be considered to be an incident report and subject to section 610.100. Any closed records pursuant to this section shall be available upon request by law enforcement agencies or the division of workers’ compensation or pursuant to a valid court order authorizing disclosure upon motion and good cause shown.

LAW ENFORCEMENT AGENCY RECORDS**610.200. Law enforcement agency log or record available for inspection and copying — limitation.**

All law enforcement agencies that maintain a daily log or record that lists suspected crimes, accidents, or complaints, shall make available the following information for inspection and copying by the public:

- (1) The time, substance, and location of all complaints or requests for assistance received by the agency;
- (2) The time and nature of the agency’s response to all complaints or request for assistance; and
- (3) If the incident involves an alleged crime or infraction:
 - (a) The time, date, and location of occurrence;
 - (b) The name and age of any victim, unless the victim is a victim of a crime under chapter 566, RSMo;

- (c) The factual circumstances surrounding the incident; and
- (d) A general description of any injuries, property or weapons involved.

Freedom of Information Act

*The federal government's public
information law*



The federal government also has a sunshine law requiring public governmental bodies to open their meetings and records to the public. Called the Freedom of Information Act, a copy of the federal law can be obtained from the University of Missouri-Columbia's Freedom of Information Center. The center is housed in the School of Journalism.

The center's staff will help answer your questions about public access to federal meetings and records.

The center also has sample request forms available that Missourians can use to request information from a federal or state governmental entity. This same information is available on the center's Web site at <http://foi.missouri.edu/>.

CONTACT THE CENTER

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REVISED AUGUST 2004